

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON

Assigned on Briefs January 10, 2001

STATE OF TENNESSEE v. RICKY FRITH, JR.

**Direct Appeal from the Criminal Court for Shelby County
No. 98-13237 Bernie Weinman, Judge**

No. W2000-00838-CCA-R3-CD - Filed May 1, 2001

The Defendant was found guilty, by a jury, on Count Two, theft of property valued at over \$10,000, but less than \$60,000, a Class C felony. Tenn. Code Ann. §§ 39-14-103 and 105. The Defendant was sentenced to the Department of Correction for eight years as a Range II offender and was fined \$1000. The Defendant appeals his conviction claiming that the evidence was insufficient to support his conviction for theft of property. We disagree.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Affirmed

JOHN EVERETT WILLIAMS, J., delivered the opinion of the court, in which DAVID G. HAYES and ALAN E. GLENN, JJ., joined.

A C Wharton, Public Defender, and Garland Ergüden, Assistant Public Defender, for the appellant, Ricky Frith, Jr..

Paul G. Summers, Attorney General and Reporter; Clinton J. Morgan, Counsel for the State; William L. Gibbons, District Attorney General; and Jennifer Smith Nichols, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

On November 10, 1998, the Defendant, Ricky Frith, Jr., was indicted on two counts of theft of property under Tennessee Code Annotated section 39-14-103. Count One alleged that the Defendant committed theft by obtaining property. Count Two charged theft by exercising control of property. The Defendant pled not guilty and a jury trial followed. On February 28, 2000, a Shelby County jury found the Defendant guilty of Count Two, theft of property [by exercising control] valued at more than \$10,000, but less than \$60,000. On March 30, 2000, the Defendant received an eight-year prison sentence to the Department of Correction as a Range II offender and was fined

\$1000. Following the Defendant's conviction, a motion for a new trial was filed. On March 30, 2000, the motion for a new trial was also heard. The motion was denied and this appeal followed.

FACTS

During the early morning hours of August 29, 1998, a 1995 Ford Explorer was stolen from the home of Melvin and Lisa Bompreszi. Mrs. Bompreszi was out of town at the time of the theft. Mr. Bompreszi testified that he was asleep at the time of the theft and awakened by a neighbor who became concerned when he saw the vehicle being driven down the street at a high rate of speed. The theft occurred between 2:30 a.m. and 3:30 a.m. and was immediately reported to the police.

Sometime around 5:45 a.m. the same morning, an officer for the Memphis Police Department stopped the Defendant for speeding. A check of the vehicle being driven by the Defendant revealed that it was the Ford Explorer that had been reported stolen from the Bompreszi's residence a few hours earlier. The Defendant and two passengers in the stolen vehicle were subsequently arrested. The two passengers were later released and the Defendant was charged with the theft of the vehicle.

The Defendant testified that he was hanging out with his brother and friends at a trailer park in Millington at the time the theft occurred. Testimony established that the Defendant, his brother, and several friends were drinking alcohol and smoking marijuana while they were hanging out at the trailer park. The Defendant's brother and a friend testified that while they were hanging out at the trailer park, a white car and the stolen Ford Explorer pulled up. They said that when the white vehicle and Ford Explorer pulled into the trailer park, the Defendant walked over to the vehicles and had a brief conversation with the driver of the Ford Explorer. The Defendant claims that he then gave an unknown "junkie lady" \$25.00 to rent the vehicle.

ANALYSIS

_____The Defendant contends that the evidence presented in this case was insufficient for a trier of fact to find him guilty of theft of property. After a review of the record, we respectfully disagree.

A. Standard of Review

In determining the sufficiency of the evidence, this court does not reweigh or reevaluate the evidence. State v. Cabbage, 571 S.W.2d 832, 835 (Tenn.1978). Nor may this court substitute its inferences for those drawn by the trier of fact from circumstantial evidence. Liakas v. State, 199 Tenn. 298, 305, 286 S.W.2d 856, 859 (1956). To the contrary, this court is required to afford the State the strongest legitimate view of the evidence contained in the record as well as all reasonable and legitimate inferences which may be drawn from the evidence. State v. Tuttle, 914 S.W.2d 926, 932 (Tenn. Crim. App.1995).

The trier of fact, not this court, resolves questions concerning the credibility of the witnesses, the weight and value to be given the evidence, as well as all factual issues raised by the evidence.

Id. In State v. Grace, the Tennessee Supreme Court stated, “[a] guilty verdict by the jury, approved by the trial judge, accredits the testimony of the witnesses for the State and resolves all conflicts in favor of the theory of the State.” 493 S.W.2d 474, 476 (Tenn. 1973).

Because a verdict of guilt removes the presumption of innocence and replaces it with a presumption of guilt, the accused has the burden in this court of illustrating why the evidence is insufficient to support the verdict returned by the trier of fact. State v. Tuggle, 639 S.W.2d 913, 914 (Tenn. 1982); Grace, 493 S.W.2d at 476.

B. Case Analysis

Under Tennessee Code Annotated section 39-14-103, “[a] person commits theft of property if, with intent to deprive the owner of property, [Count One] the person knowingly obtains or [Count Two] exercises control over the property without the owner’s effective consent.” The fact that the Defendant had possession of the stolen vehicle remains wholly undisputed in this case. Further, testimony established that the Bompreszi’s had not given consent for anyone to take the vehicle from their residence. What lies in issue in terms of sufficiency of the evidence is whether the Defendant exercised control over the vehicle without the owner’s effective consent, with the intent to deprive the owner of the property.

In the instant case, the evidence established that the time period between the theft of the vehicle and the Defendant’s arrest was, at most, three and one-half hours. Testimony established that the vehicle was stolen between 2:30 a.m. and 3:30 a.m. and the Defendant was arrested for driving the stolen vehicle around 5:45 a.m. This court has held in the past that “[p]ossession of recently stolen goods gives rise to the inference that the possessor has stolen them . . . [and] that the [p]ossession of recently stolen goods may . . . be sufficient evidence to sustain a conviction.” Tuttle, 914 S.W.2d at 932. However, for the jury to be permitted to consider that inference, the trial court must have properly instructed the jury on this inference. The record indicates that the jury was properly instructed on such. Returning to the instant case, certainly at the time the Defendant was arrested for driving the stolen vehicle, the vehicle was still considered to be “recently stolen goods.” Therefore, it was proper for the jury to find the Defendant guilty based upon his possession of the recently stolen vehicle.

The Defendant’s claim of insufficiency of the evidence is based upon testimony and other evidence, or lack thereof, that was presented at trial. The Defendant offers, as support for his claim, testimony that was given by three separate witnesses. The Defendant first points to the fact that one witness testified that the Defendant told her that he rented the vehicle. The Defendant also contends that two witnesses “saw what appeared to be an exchange” between the Defendant and the unidentified “junkie lady.”

With regards to evidence that was presented, and not presented, at trial, the Defendant sets forth in his brief that his cooperation with the police and possession of an ignition key tend to bolster his claim of innocence. The Defendant further attempts to bolster his claim by pointing to the

following facts: no witnesses saw the Defendant enter the Bompreszi's vehicle; nobody heard an alarm on the night the vehicle was stolen; and there were no visible signs of forced entry.

As set forth above, this court does not reweigh or reevaluate the evidence. Nor may this court substitute its inferences for those drawn by the trier of fact from circumstantial evidence. The trier of fact, not this court, resolves questions concerning the credibility of the witnesses, the weight and value to be given the evidence, as well as all factual issues raised by the evidence. With regards to testimony that was given at trial, it is obvious that the jury chose to discredit the witnesses who testified on behalf of the Defendant. With regards to the evidence, or lack thereof, that the Defendant relies upon to support his claim of innocence, the jury obviously did not find it to be exculpatory. The weight given to the testimony and evidence presented at trial was for the jury to decide. The Defendant has not met the burden of illustrating why the evidence is insufficient to support the verdict returned by the jury. This court will not disturb the jury's finding.

CONCLUSION

Having found sufficient evidence to support the Defendant's conviction, we affirm the judgment of the trial court.

JOHN EVERETT WILLIAMS, JUDGE